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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-208101

DATE: April 22, 1983

MATTER OF: Gunnery Sergeant John F. Cassel,
FMCR (Deceased)

DIGEST:

A Marine who resided in a community property state filed a claim with the Marine Corps for loss and damage incurred in the shipment of his household goods incident to his military service. Prior to settlement of his claim, he was murdered by his wife. Even though a portion of the claim covers property in which the wife had an interest in ownership and even though she is highest on the list of claimants provided under the Military Members' and Civilian Employees' Claims Act, 31 U.S.C. § 3721, she is not entitled to payment for any portion of the claim as the member's surviving spouse since she feloniously caused his death. Payment of the entire claim should be made to the member's surviving children of his previous marriage who are next in the order of priority of claimants under the Act.

This is in response to a request for a decision as to the proper method for the settlement of the claim of Gunnery Sergeant John F. Cassel, Fleet Marine Corps Reserve (Deceased), for amounts due as a result of damage incurred in his shipment of household goods. The request was submitted by the disbursing officer, Headquarters U.S. Marine Corps, Arlington, Virginia.

We find that payment should not be made to the widow of Sergeant Cassel in spite of the fact that she had an ownership interest in a portion of the lost and damaged property covered by the claim. The entire amount should be paid to Sergeant Cassel's surviving children.

Sergeant John F. Cassel was released from active duty and transferred to the Fleet Marine Corps Reserve on August 5, 1978, after 20 years of active service. He selected Sparks, Nevada, as his home, and he and his wife, Nancy, moved there. Their household goods were shipped there

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at Government expense from his last duty station, Oceanside, California, as authorized by 37 U.S.C. § 406(g). In July 1979 he filed a property loss claim with the service for loss and damage to his household goods during shipment from California to Nevada.

On August 22, 1979, prior to settlement of his loss and damage claim, Sergeant Cassel was shot and killed by his wife, Nancy. She was later convicted of second-degree murder in causing his death and sentenced to 20 years in prison.

The Marine Corps has paid other decedent benefits arising out of Sergeant Cassel's death in equal amounts to his four children by his previous marriage. At issue here is the distribution of payment on his property loss and damage claim, which has been approved by the service for payment in the amount of \$3,948. The disbursing officer questions whether payment of this claim or any part thereof should be made to Sergeant Cassel's widow, Nancy, or to his children.

This matter has been considered by several military legal advisers, but their opinions resulted in conflicting conclusions. It was generally suggested that the claim should be settled in accordance with section 2115 of chapter 21, Manual of the Judge Advocate General of the Navy. Chapter 21 of the Manual provides regulations for the Navy, including the Marine Corps, for settling claims under the Military Personnel and Civilian Employees' Claims Act of 1964 (previously 31 U.S.C. §§ 240-243) now codified in 31 U.S.C. § 3721. See Pub. Law 97-258, Sept. 13, 1982, 96 Stat. 973-974. Section 2115 of chapter 21 of the Manual provides that when a member is deceased his "survivor" may submit a claim for his lost or damaged personal property, and that the order of precedence among survivors gives the surviving spouse priority, followed by the surviving children. The referenced legal opinions observe that in most states public policy or statute requires the termination of an individual's right to benefit or inherit from a decedent (or from his estate) if the survivor unlawfully or intentionally caused the death of that person. However, according to one of the opinions, while there was a Nevada law, NRS 134.130, in effect at the time of this incident

which prohibited the inheritance of property of the decedent by one convicted of murdering the deceased, the provision was at that time only included among statutes governing separate property (property which does not belong to the marital community but to only one of the spouses).

Thus, on the basis that the Nevada statute did not pertain to property of the marital community, and in the absence of any established public policy in Nevada to the contrary, it was postulated that Nancy Cassel might be entitled to the entire amount of the claim for the loss and damage of their community property. Another of the legal opinions, provided by the Judge Advocate General of the Navy, states that the claim is not governed by state inheritance laws and suggests that payment of the claim to Nancy Cassel is contrary to public policy and, therefore, a claim by Sergeant Cassel's children should receive priority. As is explained below, we agree with this view.

Although most of the amount due on Sergeant Cassel's claim apparently covers property which under Nevada law belonged to him and his wife as a marital community, as a claim for the loss of personal property incident to his service in the Armed Forces, payment thereof under the authority of the Claims Act, 31 U.S.C. § 3721, is the exclusive remedy for the loss. See Fidelity-Phenix Insurance Co. v. United States, 111 F. Supp. 899 (N.D. Cal. 1953), affirmed, 222 F.2d 942 (9th Cir. 1955), and Wallis v. United States, 126 F. Supp. 673 (E.D.N.C. 1954).

Since under the Claims Act the head of the agency is given full authority to settle claims falling within its provisions, and since such settlements are final and conclusive (31 U.S.C. § 3721(k)), we do not render decisions on the merits of individual claims. However, since the question in this case relates to construction of the statutory scheme, we find it appropriate for our consideration.

The provisions of 31 U.S.C. § 3721(b) and (h), which are pertinent here, are as follows:

"(b) The head of an agency may settle and pay not more than \$15,000 for a claim against the Government made by a member of

the uniformed services under the jurisdiction of the agency or by an officer or employee of the agency for damage to, or loss of, personal property incident to service. A claim allowed under this subsection may be paid in money or the personal property replaced in kind.

* * * * *

"(h) The head of the agency--

"(1) may settle and pay a claim made by the surviving spouse, child, parent, or brother or sister of a dead member, officer, or employee if the claim is otherwise payable under this section; and

"(2) may settle and pay the claims by the survivors only in the following order:

"(A) the spouse's claim.

"(B) a child's claim.

"(C) a parent's claim.

"(D) a brother's or sister's claim." (Emphasis added.)

While Sergeant Cassel had filed a claim with the Marine Corps cognizable under 31 U.S.C. § 3721 prior to his death, at the time he died the claim had not been finally settled and paid. Therefore, section 3721(h), in which Congress provided who may make claim and be paid when the member is deceased, is applicable here.

But for the fact that Nancy Cassel unlawfully caused the death of Sergeant Cassel, under 31 U.S.C. § 3721(h)(2), the entire claim would be payable to her as his surviving spouse. In the payment of claims for arrears of pay, compensation, or other benefits to heirs or beneficiaries of deceased Federal employees and military members, the policy

governing settlement of such accounts is that payment will not be made to the person otherwise entitled if that person has feloniously or otherwise unlawfully caused or participated in the death of the individual in whose estate he seeks to benefit, regardless of the law or policy of the local jurisdiction. 55 Comp. Gen. 1033 (1976); 51 Comp. Gen. 483 (1972); and Matter of Morgan, B-188403, May 5, 1977. This policy is based on the fundamental rule of law that a person shall not be permitted to profit by his own wrongful act. See Matter of Bailey, B-187743, July 7, 1977.

We recognize that the present claim does not involve arrears of pay or allowances that accrued upon the death of the member. Nevertheless, it is a Government-provided benefit in the nature of free insurance covering claims for property lost or damaged incident to the service of a member or an employee. Accordingly, in view of the policy against payment of benefits to one who unlawfully caused the death of the member, in our opinion payment of this claim should not be made to Nancy Cassel. Instead, it should be paid to Sergeant Cassel's children of his previous marriage, since under 31 U.S.C. § 3721(h)(2) they are next in the order of priority of claimants.

for *Larry R. Van Cleave*
Comptroller General
of the United States